Guide to Applying for Permanent Operating Authority: PROPERTY

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Prepared by: Interstate Commerce Commission
Office of Public Assistance
Washington, DC 20423

FOREWORD

The information contained in this booklet should be used as a guide to the Interstate Commerce Commission's application procedures and policies applicable to the transportation of **property.** It replaces all prior ICC publications that pertain to applying for permanent motor carrier of **property** operating authority.

Please note that the application procedures outlined in the following pages apply to all motor carriers and brokers of **property** as well as water carriers and household goods freight forwarders. The discussions on entry, standards of proof, acceptable forms of authority, and application filings, do not relate to the transportation of **passengers.** A Commission publication concerning the transportation of **passengers** is available upon request.

If questions arise that are not answered in the following pages, you are urged to contact any ICC regional or field office, whose telephone numbers are contained in local telephone directories. Additionally, the Commission's Office of Public Assistance (202) 275-7597, will respond to inquiries relating to application procedures.

DEFINITIONS

Motor Common Carrier:

An individual, company, etc., that provides motor vehicle transportation for compensation to the general public and that offers identical services to all shippers for the same published fees. The rates charged by motor common carriers must be published in a tariff and made available for public view.

Motor Contract Carrier:

An individual, company, etc., that offers motor vehicle transportation for compensation under continuing contract(s) to a named shipper(s) or named industry(ies) covering a series of shipments during a stated period of time and that (1) assigns vehicles for the exclusive use of each contracting party, or (2) meets the distinct needs of each contracting party. The rates charged by motor contract carriers are negotiated between the parties, must be included in a written bilateral contract(s), and are not subject to public view.

Property Broker:

An individual, company, etc., that, for compensation offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling or arranging for transportation of regulated commodities by motor carrier. The actual transportation is performed by ICC licensed motor carriers and the broker does not assume responsibility for the freight. This service may be performed on behalf of motor carriers, shippers, or receivers of freight. A record of each transaction (including the amount of compensation received), must be maintained, and each party to a brokered transaction may review the record.

*Freight Forwarder:

An individual, company, etc., that holds itself out to provide transportation for compensation in interstate commerce and in the course of its business (1) arranges for or actually assembles and consolidates shipments and performs or provides for break-bulk and distribution operations of the shipments; (2) assumes responsibility for the transportation from place of receipt to place of destination; and (3) uses for any part of the transportation a carrier regulated by the ICC.

*Freight forwarders (except those engaged in handling used household goods), are no longer subject to ICC entry rules but must still file proof of cargo insurance with this Commission.

The Motor Carrier Act of 1980 set entry standards of proof (evidentiary criteria) that must be met for first-time motor carrier of **property** applicants to enter the market and existing motor carriers to expand their operations. To implement this Act the ICC adopted rules governing permanent authority application procedures for **property** carriers and issued a policy statement regarding acceptable forms of motor carrier and broker of property authority. These procedures and policies are discussed in this publication.

THE NATIONAL TRANSPORTATION POLICY

The Act specifically directs that the Commission consider the objectives of the National Transportation Policy in deciding whether to grant or deny a motor carrier of **property** application. These objectives include promoting competitive and efficient transportation services in order to:

* meet the needs of shippers, receivers and consumers;
* allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public;
* allow the most productive use of equipment and energy resources;
* enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wage and working conditions;
* provide and maintain service to small communities and small shippers;
* improve and maintain a sound, safe, and competitive privately-owned motor carrier system;
* promote greater participation by minorities in the motor carrier system;
* promote intermodal transportation.

STANDARDS OF PROOF

An applicant for regular motor carrier of property authority must establish that it is fit, willing, and able to provide the service, and must present evidence that the proposed operation will serve a useful public purpose, responsive to a public need or demand. This "threshold burden" can be met by an applicant submitting shipper support for its proposal or submitting other kinds of supporting evidence. An applicant may offer statements of support from sources other than shippers; such as public officials, trade associations, civic associations and consumers who are familiar with transportation needs and patterns. Other reliable evidence (such as innovative rate proposals or proposals for increased fuel savings) showing that a proposed operation would promote competitive and efficient transportation service designed to meet one or more of the national transportation policies may be used to establish a prima facie case and will strengthen applications supported by shippers.

Additionally, an applicant desiring to conduct any or all of seven named types of motor carrier of property operations only need furnish evidence that it is fit, willing, and able to perform the service. No evidence of public need or demand is required. These applications are referred to as "fitness only". Specifically, the fitness only categories are:

1. Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier;

2. Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community;

3. Motor common carrier transportation for the United States Government of general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions);

4. Motor common carrier of property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds;

5. Motor common or contract carrier of property transportation of food and other edible products (including byproducts) intended for

human consumption (except alcoholic beverages and drugs), agricultural limestone and fertilizers, and other soil conditioners, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) must not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a)(6) [that is, exempt agricultural commodities];

6. Transportation of used household goods for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense;

7. Motor carrier brokerage of general commodities (except household goods).

ACCEPTABLE FORMS OF REQUESTS FOR AUTHORITY

The ICC requires that all motor carriers of **property** request commodity and territorial authorizations sufficiently broad enough to provide a complete service to the shippers desiring the service. Narrowly defined descriptions will not be accepted for filing. Further, an applicant may not reduce the scope of its request for authority after submitting the application (commonly referred to as restrictive amendments).

Additionally, motor carrier applicants seeking **contract** authority may seek to serve an entire industry or industries or class of persons rather than named shippers. An applicant for motor contract carrier authority to service a class of persons or industry under contract must still meet the criteria for contract carriage: it must demonstrate that it will meet either the equipment dediction or the distinct needs tests. Regarding the distinct needs test, an applicant may submit evidence on the generic transportation requirements of the particular shipper class that would be better met by contract carriers than by common carriers. Similarly, an applicant could meet the criteria by dedicating equipment for the primary use of members of the class to be served. Prompt furnishing of suitable equipment is inherent in this type of contract.

Commodity Descriptions

The Commission has identified a list of broad industry commodity groupings generally corresponding to those found in the Standard Transportation Commodity Code Tariffs (STCC codes), that may be used in applying for permanent or temporary authority to transport **property.** This list is set out below. A carrier authorized to transport a certain industry grouping may transport all goods covered by that classification as well as materials, equipment, and supplies used in the manufacture, sale, or distribution of the commodities. An **applicant need not use one of these groupings** but may instead use any other reasonably broad commodity description.

Applicants seeking to transport general commodities may elect to exclude from their requests classes A and B explosives, household goods and/or commodities in bulk and should do so unless they can show fitness, willingness, and ability to transport these types of goods that often require special equipment or handling.

Commodity descriptions for fitness only applications are listed beginning on page 2 of this booklet.

STCC Code	Commodity Description
01	Farm Products
08	Forest Products
10, 14	Ores and Minerals
11, 29	Coal and Coal Products
13, 29	Petroleum, Natural Gas and Their Products
19	Ordnance and Accessories
20	Food and Related Products
21	Tobacco Products
22, 23	Textile Mill Products
24	Lumber and Wood Products
25	Furniture and Fixtures
26	Pulp, Paper and Related Products
27	Printed Matter
28	Chemicals and Related Products
30	Rubber and Plastic Products
31	Leather and Leather Products
32	Clay, Concrete, Glass or Stone Products
33, 34	Metal Products
35, 36	Machinery
37	Transportation Equipment
38	Instruments and Photographic Goods
40	Waste or Scrap Materials Not Identified by Industry Producing
49	Hazardous Materials
--	General Commodities (except classes A and B explosives, household goods, and commodities in bulk)1/
--	Commodities in Bulk
--	Those Commodities Which Because of Their Size or Weight Require the Use of Special Handling or Equipment
--	Household Goods
--	Building Materials
--	Mercer Commodities

1/ See discussion on page 4 under "Commodity Descriptions".

Territorial Descriptions

All irregular route common carrier of **property** applicants must define the territories to be served [origin(s) and destination(s)] in terms of areas no smaller in size than countywide. One-way authority cannot be sought by irregular-route carriers. Carriers seeking authority in one direction will be granted authority automatically to transport the same commodities in the opposite direction. Authority "between points in the United States" includes service for Alaska and Hawaii. Unless applicant can show a need for such service and that it is fit, willing, and able to provide service to such points, these two States should be excepted out of territorial descriptions for nationwide authority. Contract carriers of **property** may request authority "between points in the United States" (with the same exceptions, if applicable).

Fitness only applicants also must define the territories to be served in broad terms. Except for two of the seven **property** fitness only categories, all applicants may seek authority as broad as "between points in the United States". Applications to provide service to any community not regularly served by a motor carrier of property may be filed as "between the involved community(ies), on the one hand, and, on the other, points in the United States". Applications to provide transportation service as a direct substitute for complete abandonment of rail service may be filed as "between the point(s) of abandoned service on the railway, on the one hand, and, on the other, points in the United States".

THE APPLICATION PACKAGE

The exact information required to be submitted in a **property** application filing depends on the type of authority sought. Basically, there are five parts to an application package:

- Application form (OP-1);
- Statement of shipper or witness support or other evidence of public need (except fitness only movements);
- Verified statement of applicant;
- Caption summary;
- Filing fee.

The entire application filing should be forwarded to the ICC, Office of the Secretary, Washington, D.C. 20423.

Application Form: OP-1

All motor carrier, water carrier and broker of property applications are filed on form OP-1. The form is divided into two parts. The applicant fills out the first half of the form. Any supporting shippers or public witnesses complete the second section (the appendix).

Statement of Support

Each shipper or witness supporting a **property** application should complete a statement of support -- the second part of the OP-1. An applicant is permitted to reproduce blank copies of the appendix to the form. Every witness supporting an application should answer all questions to the best of his/her ability. The oath, as worded in the OP-1 form, must be signed and dated by each supporting witness. Evidence other than support statements should be submitted in applicant's verified statement. Because no public support is required for fitness only applications, an applicant for fitness only authority does not have to complete the second part of the application form.

Applicant's Verified Statement

The information that must be provided in fitness only application filings is somewhat different than for regular applications. However, all **property** applicants' verified statements should follow the format described below (depending on the type of authority sought), using separately numbered paragraphs. Where a particular item is not relevant, applicant should insert "N/A".

Regular Property Applications

1. Legal name and business headquarters of applicant.2/

2. Name of witness presenting evidence for applicant and why this person is qualified to speak for applicant (position with applicant and experience).

3. Authority requested in application.

4. Brief description of present ICC regulated operations or any other transportation experience. Do not submit copies of existing authority unless they are in issue in the application.

2/ See Appendix A before proceeding further.

5. Description of equipment. It is not necessary to list separately all pieces. A summary is preferred. If applicant has no equipment, it should specify its plans to obtain equipment (such as owner-operators under lease).3/

6. Safety evidence. Motor carriers holding ICC authority should indicate that they are in compliance with DOT safety regulations. New entrants should state the following: "I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations". (Information concerning safety and hazardous materials regulations may be obtained by calling DOT.)

7. Service now provided to supporting shipper(s) or witness(es), if any, or service provided within area sought in the application.

8. Description of service that will be provided if application is granted. State whether services of this type are not now available.

9. Name and address of person(s) or shipper(s) now served under contract(s). (Applies only to existing contract carriers.)

10. Any other evidence in support of the application. (Motor common carrier of property applicants not submitting shipper support statements must submit other evidence under this paragraph.)

3/ If the application is for general commodities authority, including transportation in bulk, applicant should specify that it possesses the specialized equipment or, if not, its willingness to obtain equipment appropriate to transport bulk commodities.

11. Legal argument supporting the application (optional).

12. Any oral hearing request (optional).

Verification: Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

Fitness Only Property Applications

1. Legal name and business location of applicant.4/

2. Name of witness presenting evidence and why this person is qualified to speak for applicant (position with applicant and experience).

3. Authority requested in application.

4. Description of equipment. It is not necessary to list separately each piece. A summary is preferred. If applicant has no equipment, it should specify its plans to obtain equipment (such as owner-operators under lease).

5. Safety evidence. Motor carriers holding ICC authority should indicate that they are in compliance with DOT safety regulations. New entrants should state the following: "I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations". (Information concerning safety and hazardous materials regulations may be obtained by calling DOT.)

6. If the application is to serve a "community not regularly served", describe the location of the community and the highways which serve the community. If known, state the last known date of service from other motor common carriers of property and their identity, and the date when service was requested from these carriers.

4/ See Appendix A before proceeding further.

7. If the application is for "transportation service as a direct substitute for complete abandonment of all rail service to a community", state docket number, approval date, and effective date of the Commission's decision approving abandonment, or date of the Commission's recommendation or pronouncement in a noncertificate abandonment; give the location of the points sought to be served, and indicate to what portion of the rail line they are adjacent (submit maps where obscure rural points are involved); certify that rail service was offered at the points for which authority was sought; and certify that all rail service has been terminated, and give the date, if known, or if rail service has not yet terminated, state that fact and submit certification that after rail service does cease on the line to be abandoned no rail service by any carrier will remain to the involved community. The application must be filed no later than 120 days after the effective date of the Certificate of Abandonment issued by the Commission, or, in a noncertificate abandonment, 120 days after issuance of a recommendation or other pronouncement by the Commission regarding the abandonment.

   Verification: Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

Caption Summary

The Commission is required to notify the public of its intention to approve requests for operating authority. This notice is made by publication of a description of the sought authority (a caption summary). Each application filing must include a caption summary. It must be prepared on a separate sheet of paper and must conform to a prescribed format. (Examples of caption summaries are set out in Appendix B.)

Filing Fee

Permanent motor carrier and water carrier and broker of **property** applications must be accompanied by a filing fee of $200. A check or money order covering the fee should be made payable to the Interstate Commerce Commission. The only exception to the $200 filing fee is for owner-operator applications to transport food and other specified products as specified under the fifth fitness only category (see page 2). The filing fee for that particular type of authority is $100. All other fitness only categories are subject to the $200 filing fee.

Mailing the Application

Once an applicant has completed and rechecked its request, the original and one copy of the entire application package should be forwarded to the ICC, Office of the Secretary, Washington, D.C. 20423. The word "APPLICATION" should appear on the lower left hand corner of the envelope. Applicant should keep sufficient copies for its own use.

Additionally, one copy of the application must be sent to the ICC regional office serving the State in which applicant's business is headquartered (see Appendix C). A copy of the caption summary describing **property** authority requests must be furnished to the State transportation regulatory body having jurisdiction in the applicant's domicile.

Furnishing Copies

An applicant is required to furnish a copy of its entire application package to any interested party upon receipt of a written request and a $10 check or money order. The copy of the application package must be mailed no later than 3 days after receipt of a request. An applicant failing to comply with such a request is subject to dismissal of its application.

ICC APPLICATION PROCESS PROCEDURES

When a property application is received at the Commission it is screened to insure all sections are complete. If everythiing is in order it is accepted for filing, date stamped, and assigned a docket number. When corresponding with the ICC, applicant should always refer to the docket number. The date stamped on the application is considered the official ICC filing date.

The application is examined by a Commission review board. The board decides whether there is adequate evidence to permit a grant of the authority requested. If there is insufficient evidence the application will be rejected by a letter describing the deficiencies. An applicant may either appeal a rejection or correct the deficiencies and refile the application, referring to its prior application docket number and the ICC fee number stamped on the cancelled check. Any appeal must be filed within 10 days after the date of the letter of rejection.

When sufficient proof of a useful public purpose for the proposed service is provided, the caption summary is published in the ICC Register in the form of a grant of authority, subject to protest. Generally, public notice is made about 30 days after the application is filed. In the event the ICC Register notice does not properly describe the authority being sought because of ministerial error, applicant should inform the Commission as soon as possible.

If no protest is filed within 45 days from the date of the notice, the application will be granted. If there is opposition, applicant must be sent a copy of the protest. A motor contract carrier of property cannot protest a motor common carrier of property application. Finally, should a protest be filed, applicant can file a reply within 15 days of the final protest date.

ICC DECISION PROCEDURES

As discussed earlier, if no protest to an application is received by the Commission within 45 days following the date of notice in the ICC Register, the application will be granted as published. If a protest is filed, shortly after all statements have been received the Commission will decide whether an opposed application should be decided by modified procedure or oral hearing. Less than one percent of all motor carrier applications are handled by oral hearing

(a court-like procedure where there is opportunity for cross-examination of all witnesses). Instead, the ICC processes most applications under modified procedure (an examination of all written statements). When an application is to be decided under modified procedure, no written notice will be received by applicant or protestant(s) until an initial decision has been issued.

By law, an initial decision in motor carrier, water carrier, and broker of property permanent authority application proceedings processed by modified procedure must be issued within 180 days of the filing date. All parties to the proceeding will be notified of the initial decision by service of a copy of such decision and may appeal the decision within 20 days after it is served. If no appeal is filed, the decision is effective 20 days after the date it is issued.

LICENSING REQUIREMENTS

Prior to beginning operation, a successful motor carrier applicant must comply with certain ICC licensing requirements. Basically, these requirements are: (1) filing proof of adequate insurance ($750,000 liability and, except for contract carriers, $10,000 cargo insurance); (2) designating agents in each State through which operations will be conducted who will accept legal filings on a carrier's behalf (known as process agents); and (3) filing a copy of the tariffs or rates to be charged. (Motor **contract** carriers are not required to file their rates with the ICC.) Similarly, property broker requirements are: (1) filing of a $10,000 surety bond or other instrument in lieu of a broker surety bond, and (2) filing designation of agents in each State in which offices will be located.

APPENDIX A

FOREIGN CARRIER MORATORIUM

A provision in the Bus Regulatory Reform Act of 1982 (enacted September 20, 1982) prohibited ICC issuance of authority to any motor carrier residing, owned or controlled by persons in Canada or Mexico. Since signing the Act, the President has determined that a suspension respecting Canada is in the national interest.

To comply with the moratorium provision, the Commission currently requires that all motor carrier applicants include in their verified statement a certification regarding their domicile, ownership and control. The following certification should be made immediately below item (1) of the verified statement:

> "I certify that the applicant in this proceeding is not domiciled in Mexico. Moreover, the applicant is not owned by or controlled by persons of that country."

All applicants must disclose their current Federal Department of Transportation (DOT) safety rating and the date it was obtained. It should be included in the safety evidence portion of the verified statement. If the rating is satisfactory no further evidence is required. Applicants yet to receive a DOT rating should specify such and include the standard safety certification language in their verified statements.

In addition to disclosure of their DOT safety rating and date, applicants holding conditional safety ratings (other than those seeking hazardous materials authority) must submit proof a DOT reaudit has been requested and evidence addressing the specific measures taken to achieve full compliance with DOT safety requirements and to correct any safety deficiencies cited in their most recent DOT audit. Applications filed by conditionally-rated carriers will be decided by the Commission on a case-by-case basis.

The applications of all carriers holding unsatisfactory DOT ratings and those of hazardous materials carriers with conditional safety ratings will be rejected. Rejection will be without prejudice to refiling upon receipt of upgraded DOT safety ratings.

Applications not containing the required certifications will be rejected.

APPENDIX B

SAMPLE CAPTION SUMMARIES

Common Carrier Authority

No. MC-	Filed:
Applicant:	Scarlet Moving and Storage, Inc. 10 High Ridge Road Kingsport, TN 37664
Applicant's Representative:	Herbert A. Lime (same address as applicant) (615) 111-1111

Transporting household goods between points in KY, NC, TN, VA and WV.

Contract Carrier Authority

No. MC-	Filed:
Applicant:	Purple Truck Lines Corporation 100 Capitol Way Fargo, ND 58102
Applicant's Representative:	V. G. Tan Post Office Box 1 Minneapolis, MN 55434 (612) 222-2222

1.) Named Shippers:

Transporting data processing machinery between points in the United States (except AK and HI), under continuing contracts with DP Producers, Inc. of Salt Lake City, UT and Office Dynamics of Atlanta, GA.

OR

2.) Industry:

Transporting data processing machinery between points in the United States (except AK and HI), under continuing contracts with shippers or receivers of data processing machinery.

Broker of Property Authority

No. MC-	Filed:
Applicant:	Violet Ida Perkins d/b/a VIP Service One Plaza Street Carson City, NV 89703
Applicant's Representative	James Perkins (same address as applicant) (702) 333-3333

Motor carrier brokerage of general commodities (except household goods), between points in the United States.

APPENDIX C

ICC REGIONAL OFFICES

REGION	ADDRESS AND TELEPHONE NUMBER	STATES SERVED
EASTERN	Interstate Commerce Commission Gateway Building, Room 16400 3535 Market Street Philadelphia, PA 19104 (215) 596-4040	AL, CT, DE, DC FL, GA, KY, ME MD, MA, MS, NH NJ, NY, NC, OH PA, RI, SC, TN VT, VA, WV
CENTRAL	Interstate Commerce Commission Everett McKinley Dirksen Building 219 South Dearborn Street, Room 1304 Chicago, IL 60604 (312) 353-6204	AR, IL, IN, IA KS, LA, MI, MN MO, NE, ND, OK SD, TX, WI
WESTERN	Interstate Commerce Commission Suite 500 211 Main Street San Francisco, CA 94105 (415) 974-7125	AK, AZ, CA, CO HI, ID, MT, NV NM, OR, UT, WA WY

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